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Nos. 81-2389 and 82-358

# In the Supreme Court of the United States

OCTOBER TERM, 1982

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METROPOLITAN EDISON COMPANY, ET AL., PETITIONERS

*v.*

PEOPLE AGAINST NUCLEAR ENERGY, ET AL.

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UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE UNITED STATES OF AMERICA, PETITIONERS

*v.*

PEOPLE AGAINST NUCLEAR ENERGY, ET AL.

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*ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

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## REPLY BRIEF FOR THE UNITED STATES AND THE UNITED STATES NUCLEAR REGULATORY COMMISSION

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# In the Supreme Court of the United States

OCTOBER TERM, 1982

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No. 81-2399

METROPOLITAN EDISON COMPANY, ET AL., PETITIONERS

*v.*

PEOPLE AGAINST NUCLEAR ENERGY, ET AL.

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No. 82-358

UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE UNITED STATES OF AMERICA, PETITIONERS

*v.*

PEOPLE AGAINST NUCLEAR ENERGY, ET AL.

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*ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

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## REPLY BRIEF FOR THE UNITED STATES AND THE UNITED STATES NUCLEAR REGULATORY COMMISSION

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1. Because many of the arguments made in respondent's and amici's briefs are directed at positions we do not espouse, we take this opportunity briefly to reiterate what we believe to be the correct interpretation of the relevant provisions of NEPA.

a. Section 102(2)(C) of NEPA requires a "detailed statement" whenever the federal government undertakes "major Federal actions significantly affecting the quality of the human environment" (hereafter "environmentally significant action"). This is the so-called "trigger" provision; it defines when an EIS is required.

b. What is to be addressed in this "detailed statement"? Is it to take account of *all* the important effects of an "environmentally significant action"? That is what one might conclude if the statute stopped at this point. But the statute does not stop. It specifies that the detailed statement is to address "the *environmental* impact of the proposed action" (Section 102(2)(C)(i); emphasis added). Thus, even where the trigger provision brings the statute into play—that is, even where the government wishes to undertake "environmentally significant action"—it is only the *environmental* impact of that action that is singled out for special concern.

c. What is the human "environment"? What is an "environmental" impact? We believe these terms refer to the physical surroundings in which man lives. The primary focus is the land, the water, the air, the plant and animal life—in short, the *natural* environment. True, the ultimate concern of NEPA (as of many other statutes) is the welfare and health of mankind. But, in *this* statute, Congress was addressing action that might adversely affect people through a deterioration of the natural environment.

It is this focus that is emphasized by the statutory structure. A two-step analysis is required: Is the proposed action *environmentally* significant? If so, what its *environmental* impact?

2. Given this structure, it falsifies the statute to read it as requiring that, whenever the federal gov-

ernment proposes "environmentally significant action," the EIS must address all of the wide range of important social and economic effects—or even all of the important health effects—of that action. An intermediate question must be asked: is it the environmental impact of the proposed (environmentally significant) action that itself produces these nonenvironmental effects?

e. The "environmental" impact appraisal process becomes unmanageable and ineffective if this critical intermediate question is elided. Congress sought to cast an intense spotlight on the distinctly environmental consequences of federal action, consequences that had previously been insufficiently recognized and appreciated in federal decisionmaking. This purpose would be frustrated if that spotlight is broadened to encompass all of the important effects of every federal proposal that happens to constitute "environmentally significant action."

f. Our reading of the statute does not artificially exclude from consideration health (including mental health) effects of environmental interventions, just as it does not rigidly exclude consideration of economic and social consequences—so long as these are directly attributable to the distinctly environmental impact of these interventions. Our position is, therefore, consistent with the regulations of the Council on Environmental Quality stipulating that both direct and indirect environmental effects are to be considered in an EIS (40 C.F.R. 1508.8). When the distinctively environmental impact of federal action itself creates side effects on a broad range of human concerns ("aesthetic, historic, cultural, economic, social, or health") (40 C.F.R. 1508.8(b)), those second-order effects are within the scope of the EIS.

g. Respondent's and amici's fundamental line of argument is: (i) the restart of TMI-1 is "environmentally significant action"; (ii) one of its important effects will be a deterioration of the mental health of nearby residents; (iii) this adverse health effect must therefore be addressed in the EIS. This argument depends on one of two alternative propositions. The first simply ignores the two-step structure of the statute and requires that *all* of the side effects of "environmentally significant action" be automatically considered, whether or not these side-effects are themselves attributable to the environmental impact of the proposed action. It is our position that, for the reasons just given, this construction is precluded both by the plain language and by the central purposes of the statute.

h. In the alternative, it seems to be asserted that the adverse mental health consequences of restart would in fact be caused by the environmental impact of the proposed (environmentally significant) action. But respondent's formulations of this assertion obscure a critical feature of this case: here all of the adverse mental health effects would be a product of stress produced by fear of environmental impacts, not by those impacts themselves. Our submission, on the other hand, is that fear of operation of a nuclear power plant is not itself an environmental effect within the meaning of NEPA. True, the alleged fear is the fear of environmental consequences. But it is not produced by actual changes in the physical environment, but rather by subjective reactions to it. In short, for reasons to be elaborated, we believe that the creation of anxiety is not itself an environmental impact, and therefore does not qualify as a subject to be addressed in its own right in an EIS.

i. In contrast to respondent, we offer the Court a principled interpretation of the range of environmental impacts cognizable under NEPA that is consistent with the statute's fundamental purpose: the protection of the natural environment. It is through that protection that Congress sought in this statute to contribute to the health and welfare of mankind. Congress understood that man's health and welfare depend upon the continuing vitality of the natural environment and thus instructed federal agencies to consider carefully the effects of proposed federal action upon that natural environment. That is why NEPA requires examination only of those human health effects that are directly attributable to environmental causes.

2. We now turn to a more detailed examination of respondent's arguments.

a. Respondent seems to concede that its allegations of adverse effects upon mental health are within the scope of NEPA only if "there is an *environmental cause* for the health damage" (Br. 21; emphasis added). It argues that the requirement of environmental causation has been satisfied here because the renewed operation of TMI-1 and its mental health effects will occur in a "geographic area" or in "human surroundings" (Br. 25, 26, see also Br. 15-16 n.29). However, it is not easy to conceive of federal activity that does not take place in a "geographic area" or "human surroundings." Under respondent's construction of the terms "environment" and "environmental" the environmental causation requirement has effectively been read out of the statute, and all effects of federal "environmentally significant action" would be subject to NEPA evaluation.

b. Respondent also asserts that the requirement of environmental causation is satisfied because "restart

of TMI-1 * * * will cause the local environment to threaten human health" (Br. 15), that "psychological health damage * * * would result from the change that restart will cause in the human environment at Three Mile Island" (Br. 28), and that this case involves "federal action that would fundamentally change the physical reality of the surrounding environment" (Br. 29). But reference to the environment in each of these phrases is gratuitous and misleading. It is the knowledge of restart and associated fear, rather than actual changes in the physical environment, that will be the cause of any mental trauma that is occasioned by restart.

c. Respondent also argues (Br. 30-32) that the alleged mental distress is environmentally caused because it is caused by the "potential" for, or "possibility" of, a nuclear accident that would entail environmental consequences.[1] Respondent starts with the valid premise that NEPA requires a federal agency to consider not only immediate and certain environmental effects but also those that are reasonably possible. But as we explained in our opening brief (at pages 44-48), psychological harm that is attributable to anxiety caused by a "potential" for or "risk" of an impact on the natural environment cannot be regarded as caused by an environmental impact. Contrary to all conventional notions of causation, the alleged environmental effect (stress) would here occur in advance of its environmental cause (radiation released in a nuclear accident), and whether or not the "cause" itself ever occurs. The alleged stress would arise if residents of the TMI-1 area believed

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[1] See, *e.g.*, Resp. Br. 30 ("potential for massive radiation exposure"); *id.* at 30-31 n.53 ("prospect of a future accident"); *id.* at 31 ("result of the potential for * * * serious radiation exposure").

the plant to be operating, even if it is not. Conversely, the alleged stress would not, on respondent's theory, arise if operation of the plant were conducted in secret. The point of these fanciful illustrations is simply that the alleged health effect of restart is attributable to the anxieties of PANE members, rather than to actual changes in the physical environment.[2]

3. It is not a matter of indifference whether fears of an environmental impact are regarded as environmental impacts that must be assessed in their own right under NEPA. The purpose of NEPA was to assure that threats to man's life support system—a distinct class of threats—were no longer overlooked or undervalued in federal decisionmaking. NEPA has thus been interpreted to require that federal decisionmakers take a "hard look" at the environmental consequences of environmentally significant federal action. *Kleppe* v. *Sierra Club*, 427 U.S. 390, 410 n.21 (1976). Classification of individuals' fears about possible environmental impacts as themselves constituting environmental impacts, requiring formal analysis in their own right, would confuse and dilute the "hard look" principle and inject an uncertain and artificial component into every environmental assessment.

a. We need not quarrel with the assertion of amici that methods exist for the study and assessment of

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[2] Only in a footnote (Br. 31 n.55) does respondent address our central contention that the alleged mental distress and environmental impacts merely stem from a common source—the fact of restart—and that the latter do not cause the former. Respondent claims that the mental stress "flows from the restart source *because* the potential for physical damage also flows from that source" (*ibid.*; emphasis in original). This formulation again ignores the intermediate question mandated by the statute. And it again obscures the fact that what causes the mental stress is fear of environmental harm, not actual environmental harm.

stress. But here we are talking about predicted stress, to be created by apprehension of future events whose physical attributes are themselves not wholly certain. Multiple layers of uncertainty are built into such an inquiry. Further, the question whether the study has been carried out by proper methodologies, and whether the stress has been accurately and objectively predicted, will inevitably arouse controversy—and, not coincidentally, will inevitably become a fertile breeder of complex and time consuming litigation. At the very least, then, it is a most serious question whether sensitivity to the environmental consequences of federal action will be increased by the injection of this volatile and tangential issue into the environmental assessment process.

b. Stress caused by fears of environmental consequences is not merely an additional consequence comparable to others to be assessed in the NEPA process. It is an independent and cross-cutting variable, responsive to many factors that have nothing to do with improving or degrading the environment. For instance, fear of nuclear radiation and accidents is intense, and may lead some to prefer resort to coal as a source of power without regard to the comparative environmental impacts of the two proposals. And if stress caused by fears of government action is denominated an environmental impact to be given independent formal weight, this creates an incentive for those opposed to that action to fan those fears, whether or not the opposition is environmentally motivated and whether or not the fears are rationally grounded.

c. It is not easy to see how studying and evaluating the intensity of public fear and suspicion surrounding the operation of a nuclear power plant will

contribute to the rational assessment of the safety of that plant. As Commissioner Hendrie explained (Pet. App. 89a):

> If anxieties are rationally based, the corrective measures which would alleviate the stress would presumably be justifiable in terms of protecting physical health and safety—irrespective of their effect on psychological stress.

On the other hand, to the extent that anxieties about environmental hazards are not warranted by the actual environmental hazards, attempts to measure those anxieties will either be an empty exercise or will tend to distort the process of reasoned and responsible decisionmaking in this controversial field.

d. That fear of an environmental impact is very different from a true environmental impact is revealed by the various proposals for mitigation measures. Respondent frankly concedes (Br. 20 n.35) that its goal is to keep the TMI-1 plant shut permanently. Of course this solution does not identify any distinctively environmental effects of plant operation; it therefore symptomizes the fact that respondent's fears cannot be specifically traced to any such effects. The alternative mitigation measures suggested by respondent—"a very cautious and gradual increase to full power or a limitation on the force of the chain reaction, perhaps coupled with other measures" (*ibid.*) —are equally revealing. To the extent that these measures may actually be required or desirable for attainment of public health and safety from radiation or accident, they are of course within the scope of NEPA in any event. However, insofar as these measures are not warranted under NEPA (or the Atomic Energy Act) in order to guarantee public health and

safety, they are clearly exposed as nonenvironmental solutions for nonenvironmental problems.[3]

4. Several points raised by amicus curiae American Sociological Association merit attention.

a. The ASA's argument is almost entirely directed at a succession of straw men. Contrary to ASA's suggestion (Br. 12-13), we have not overlooked the fact that Section 102(2)(C) of NEPA requires two separate decisions by a federal agency: *first*, whether a contemplated federal action entails environmental effects that are sufficiently significant to require preparation of an EIS (the "trigger" decision), and *second*, the determination of the environmental impacts of that action (the "scope" decision). See Gov't Br. 23-24. Indeed, the centerpiece of our argument is that even when the obligation to prepare an EIS has been "triggered" by environmental consequences of the federal action, the scope of the resulting EIS is limited to those effects of federal action that are environmental (or environmentally caused).

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[3] More striking still are the prescriptions proposed by amicus curiae American Psychological Association (Br. 27-29). APA proposes, first that stress may be alleviated through "appropriate presentation of relevant information"—presumably about actual plant operation and environmental effects. This, of course, is not itself an environmental prescription. In any event, it is a program the Commission has pursued and will pursue whether or not it has an obligation to measure population stress. See Pet. App. 83a (opinion of Commissioner Hendrie). On the other hand, APA's second suggestion, that the Commission arrange for group therapy programs to assist plant neighbors to manage the stress resulting from their fears, plainly reveals that the distress involved is not caused by any effect upon the natural or physical environment, as opposed to the perceptions of individuals. Whatever the therapeutic benefits of this proposal might be, it cannot be regarded as an environmental mitigation strategy.

Nor, contrary to ASA's reconstruction of our argument (ASA Br. 15), do we argue that the range of effects of federal action that are considered environmental for purposes of the trigger determination (that is, whether action "significantly affect[s] the quality of the human environment") is in any respect broader than those cognizable as "environmental impact[s]" for purposes of the scope decision. Indeed, our argument is that under the statute the environmental nature of the effects of federal action is the determinative criterion at both decision points. Furthermore, we assign no dual meaning to the terms "environment" and "environmental." Rather, in *both* the trigger and scope decisions the attention of the federal decisionmaker is directed to the effects of federal action upon the natural and physical environment; nonenvironmental side effects come in only if they are the product of these environmental effects. See Gov't Br. 30-37.[4]

We also take issue with ASA's characterization (Br. 13-14) of the issue in this case as a "trigger" as opposed to a "scope" issue. In fact the issue in this case cannot be assigned to either of these pigeonholes. The question before the Commission was whether stress caused by fear of restart of TMI-1

[4] Thus, contrary to ASA's assumption, in the hypothetical scenario it propounds (Br. 17-19) population movements that are not attributable to the distinctively environmental effects of the project (such as depletion of a scarce water supply) would not be independently cognizable in connection with either the scope or trigger determination.

It should further be noted that under CEQ regulations (40 C.F.R. 1508.14 (see pages 12-14, *infra*)), the validity of which is in no way in issue here, consideration of socio-economic effects is in any event not required unless and until it has been determined that an EIS is necessary.

should be considered in connection with the proposed decision to approve restart. Without distinguishing between the trigger and scope decisions—there was no reason for it to do so—the Commission simply answered that generic question in the negative. The Commission's decision meant that psychological distress could not serve to trigger the obligation to prepare or supplement an environmental impact statement. It also meant that if an EIS were determined to be required, psychological distress occasioned by fear of federal action would lie outside the scope of environmental assessment.[5]

b. ASA mischaracterizes the import of the pertinent provisions of the Council on Environmental Quality's NEPA regulations. ASA acknowledges (Br. 21) that the separate definitions of "effects" and "impacts" (regarded as synonymous) (40 C.F.R. 1508.8)

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[5] This "generic" decision by the Commission was rendered in 1980. It was thereafter that the Atomic Safety and Licensing Board turned to the trigger issue and determined in December 1981 that a full-scale supplemental EIS was not necessary, relying upon an environmental impact appraisal that addressed the effects of restart upon the natural environment and the impact of those effects upon man, but which excluded the alleged stress effects of restart. See Gov't Br. 9-10 n.6, 18-19 n.13; compare ASA Br. 14.

ASA takes issue (Br. 14-15) with the court of appeals' characterization of the issue before it in terms of the need for supplementation of the previously prepared EIS. ASA appears to suggest that the court should have framed its inquiry in terms of whether the restart decision itself was major federal action significantly affecting the quality of the human environment. In this ASA merely echoes our observation (Gov't Br. 22-23 n.14; 82-358 Pet. 17 n.12) that the court of appeals improperly viewed the Commission's oversight of its licensees as creating a perpetually ongoing major federal action subject to NEPA without regard to whether further federal action is actually contemplated.

and "human environment" (40 C.F.R. 1508.14) must be read together to determine whether a particular effect of contemplated federal action is to be regarded as an environmental effect for purposes of the trigger and scope decision. Thus, ASA concedes that the broad range of consequences defined as "effects" of federal action by the regulations (40 C.F.R. 1508.8) are cognizable under NEPA only "if 'on the human environment' " (Br. 21).

ASA further concedes (Br. 22) that under the Council's regulations, effects upon the human environment include only those upon the natural and physical environment and "the relationship of people with [the physical] environment." 40 C.F.R. 1508.14. Thus far ASA's argument is entirely in conformity with our own. But ASA then suggests that the relationship of people to the physical environment in fact encompasses all the nonenvironmental "effects which federal actions may produce—namely, 'ecological * * * aesthetic, historic, cultural, economic, social, [and] health' " (Br. 22, quoting 40 C.F.R. 1508.8, CEQ's definition of "effects"). This circular reasoning would read the regulations as discarding the statutory directive that an EIS be confined to the *environmental* impacts of federal action. Indeed, as ASA's brief candidly avows (Br. 22), on this reading the threshold requirement of a significant effect "on the human *environment*" loses all significance.[6]

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[6] Under the CEQ regulations, therefore, any proposed federal action which will affect the lives of people in one of these ways [*i.e.*, causing ecological, aesthetic, historic, cultural, economic, social, or health effects] qualifies as an action "affecting the quality of the human environment" under Section 102(2)(C), and the Section 1508.8 "effects" that it will produce constitute environmental

There is no warrant for assigning such a fantastic meaning to the CEQ regulations. ASA's argument takes no account of CEQ's admonition that its definition of the human environment as "the natural and physical environment and the relationship of people" thereto "*means* that economic or social effects are not intended by themselves to require preparation of an environmental impact statement." 40 C.F.R. 1508.14 (emphasis added). ASA's explanation (Br. 24) that this provision was merely intended to exclude "certain non-physical impacts of a proposed federal action when they were not accompanied by any physical environmental impacts" simply does not explain why the quoted definition "means" that social or economic effects cannot by themselves trigger preparation of an EIS. In our view the answer is plain: when such effects are not attributable to environmental causes (*i.e.*, they stand "by themselves") they cannot be regarded as environmental effects. Conversely, when social or economic effects have an environmental cause, expressed in the natural or physical environment, they are within the scope of any required EIS.[7]

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impacts for purposes of the "trigger" and "scope" decisions.

ASA Br. 22.

It should be noted that, so interpreted, the Council's regulations are wholly inconsistent with the interpretation of NEPA adopted in decisions of the courts of appeals which (as ASA concedes, Br. 27 n.27) the regulations were intended to codify. See pages 15-16 & n.9, *infra*.

[7] The Council's definition of human environment continues (40 C.F.R. 1508.14; emphasis added):

> When an environmental impact statement is prepared and economic and social and natural or physical *environmental* effects are *interrelated*, then the environmental

5. Respondent (Br. 27-29) and amicus curiae ASA (Br. 24-29) seek support for their interpretations of NEPA in the decisions of the lower courts. As explained in our opening brief (at pages 38-40), the courts of appeals have generally recognized that although "NEPA goes beyond * * * the 'physical environment' * * * factors other than the physical environment [are cognizable] * * * only when there ex-

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impact statement will discuss all of these effects *on the human environment.*

The Council thus made clear that effects of federal action not expressed upon the natural or physical environment are not within the scope of NEPA unless traceable to physical environmental effects. ASA attempts to gainsay the CEQ's stipulation that social and economic effects are cognizable under NEPA only if *"interrelated"* with effects upon the natural and physical environment, suggesting that this requirement is satisfied whenever social and economic effects stem from the same source as environmental effects. But this is to rob the requirement of interrelatedness of all meaning, for whenever a federal action has environmental and non-environmental consequences—as nearly every federal action of environmental significance does—the resulting EIS would be required, contrary to Section 102(2)(C)(i) of NEPA, to address all impacts, both environmental and non-environmental. The natural reading of 40 C.F.R. 1508.14 is that stated in our opening brief (at pages 35-38): it embodies and implements the requirement of environmental causation that defines the requirements of Section 102(2)(C). (The regulation also specifies, of course, that social and economic effects are relevant only if it has been determined on other grounds that an EIS is necessary.)

The letter of John Shea, a staff attorney at CEQ, dated February 14, 1980, reproduced as Appendix C to respondent's brief, is of course not an authoritative statement by the Council. In any event, it constitutes an ambiguous answer to an ambiguous question about the cleanup of TMI-2 (*not* the restart of TMI-1), and does not focus upon the relevance of stress caused by fears of government actions.

ist[s] a primary impact on the physical environment." *Breckinridge* v. *Rumsfield*, 537 F.2d 864, 865-866 (6th Cir. 1976), cert. denied, 429 U.S. 1061 (1977).[8] Respondent acknowledges these decisions (Br. 29), but is content to suggest that "[n]one of these cases presents a fact situation at all similar to that now before the Court," without explaining why the principle of these decisions is not controlling.

Respondent also observes that these cases recognize that the scope of NEPA extends beyond the direct impact of federal action upon the natural environment. With that proposition we have no quarrel, for our interpretation of NEPA encompasses the effects upon man of federal action—as long as those effects are propagated through the physical environment. Amicus curiae ASA suggests (Br. 26-28 & nn.26 & 27), however, that these decisions reflect only a threshold requirement that federal action have *some* environmentally significant effect, as a predicate for requiring that *all effects* arising from the particular action be addressed in an EIS. We disagree. Although it was held in each of the cited cases that no EIS was required because *no* impact on the natural environment was claimed, the rationale adopted by each of the courts of appeals was simply that social, economic and cultural effects of the character involved were not environmental effects.[9]

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[8] Accord: *Image of Greater San Antonio* v. *Brown*, 570 F.2d 517, 522 (5th Cir. 1978); *Como-Falcon Community Coalition, Inc.* v. *United States Department of Labor*, 609 F.2d 342, 345-346 (8th Cir. 1979), cert. denied, 446 U.S. 936 (1980); *Goodman Group, Inc.* v. *Dishroom*, 679 F.2d 182, 185-186 (9th Cir. 1982).

[9] See *Breckinridge* v. *Rumsfeld*, *supra*, 537 F.2d at 865-867; *Image of Greater San Antonio* v. *Brown*, *supra*, 570 F.2d at

Respondent (Br. 27-28) and amicus ASA (Br. 28) rely, finally, upon the Second Circuit's decisions in *Hanly* v. *Mitchell* (*Hanly I*), 460 F.2d 640, cert. denied, 409 U.S. 990 (1972); and *Hanly* v. *Kleindienst* (*Hanly II*), 471 F.2d 823 (1972), cert. denied, 412 U.S. 908 (1973). It is true that the Second Circuit stated in *Hanly I* that the reach of NEPA (460 F.2d at 647; citations omitted):

> extends beyond sewage and garbage and even beyond water and air pollution. The Act must be construed to include protection of the quality of life for city residents. Noise, traffic, overburdened mass transportation systems, crime, congestion and even availability of drugs all affect the urban "environment" * * *.

As previously explained, we have no quarrel with the proposition that side effects propagated by environ-

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522; *Como-Falcon Community Coalition, Inc.* v. *United States Department of Labor*, *supra*, 609 F.2d at 345-346; *Goodman Group, Inc.* v. *Dishroom*, *supra*, 679 F.2d at 185-186.

Significantly, each of the decisions refers to the statutory requirement of a "primary" impact on the physical environment; those social or economic effects said to be cognizable in the presence of such a primary impact are repeatedly characterized as "secondary"—*i.e.*, caused by a primary impact on the natural environment. *Breckinridge* v. *Rumsfeld*, *supra*, 537 F.2d at 866; *Image of Greater San Antonio* v. *Brown*, *supra*, 570 F.2d at 522; *Como-Falcon Community Coalition, Inc.* v. *United States Department of Labor*, *supra*, 609 F.2d at 345; *Goodman Group, Inc.* v. *Dishroom*, *supra*, 679 F.2d at 185.

Contrary authorities cited by ASA (Br. 28) generally are not in point. Thus, *Jackson County* v. *Jones*, 571 F.2d 1004, 1007 (8th Cir. 1978); *Monarch Chemical Works, Inc.* v. *Exon*, 466 F. Supp. 639, 655 (D. Neb. 1979); and *Metlakatla Indian Community* v. *Adams*, 427 F. Supp. 871, 875 (D.D.C. 1977), simply do not address the question whether non-environmentally-caused socio-economic effects of environmentally significant actions are cognizable under NEPA.

mental impacts may be cognizable under NEPA. We disagree, however, with the suggestion that the Act be extended directly to protect the "quality of life for city residents" generally. For city residents, as for residents of suburban or rural areas, NEPA requires only the consideration of consequences attributable to adverse *environmental* change. In any event, the broad rationale announced by the Second Circuit swept considerably beyond its actual holding, for noise is surely a physically environmental impact (as may be congestion of people, automobiles, and mass transit facilities, to the extent attributable to the decisions of federal agencies about the siting of facilities).[10]

6. Respondent argues finally (Br. 37-44) that the decision of the court of appeals imposes no undue burden on federal agencies. To the extent that contention is relevant at all, it is incorrect. Respondent suggests first that because EISs need only be prepared respecting major federal actions significantly affecting the human environment, the duty to assess

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[10] The suggestion in *Hanly I* that the influx of illegal drugs into a neighborhood is an "environmental" impact seems to us incorrect, at least in the absence of a showing that the influx was caused directly by changes in the physical environment. In any event, stress caused by fear of such an influx does not count as an environmental impact.

*Hanly I* and *II* were decided shortly after the enactment of NEPA. Since that time the courts of appeals have uniformly agreed that purely socioeconomic impacts of federal action are not cognizable under NEPA, and the Council on Environmental Quality has adopted regulations confirming that view. And *Hanly II* recognizes that the mental distress suffered by neighbors of a proposed prison in consequence of their distaste for prisons is *not* cognizable under NEPA. 471 F.2d at 833.

non-environmental effects would be limited. But as redefined by respondent, the environmental causation aspect of this test amounts to nothing more than a requirement that the federal action have some particular geographic scope (see page 5, *supra*). Moreover, if, as amicus curiae ASA contends, any proposed federal action that has aesthetic, historic, cultural, economic, social, or health effects, must be deemed environmental, limitations on the scope of the NEPA obligations disappear entirely. In any event, even if federal agencies were required "only" to assess the non-environmental effects of all environmentally significant actions, the resulting burden would plainly be substantial—and unrelated to any objective Congress intended to effectuate.

Nor is it relevant that, as respondent observes (Br. 40-41) the obligations of federal agencies under NEPA are fundamentally procedural. To be sure, it is established that once an agency has taken a hard look at environmental consequences of contemplated action its decision on the best course to pursue may not be set aside by a reviewing court. *Strycker's Bay Neighborhood Council, Inc.* v. *Karlen*, 444 U.S. 223, 226-228 (1980). But it does not follow that the substantial expansion of the procedural obligations of federal decisionmakers is to be regarded as a matter of indifference. Moreover, because NEPA was intended to force federal administrators to pay greater attention to environmental values, any decision that requires that non-environmental values be afforded the same special consideration necessarily undermines the will of Congress. If, as respondent and the amici suggest, mental health effects caused by fears aroused by federal action are insufficiently attended to, petition must be made to Congress to redress the perceived

imbalance. That objective, which is entirely foreign to the National Environmental Policy Act, cannot be accomplished through Section 102(2)(C) of the Act.

For the foregoing reasons and the reasons stated in our opening brief, the judgment of the court of appeals respecting the Nuclear Regulatory Commission's responsibilities under NEPA should be reversed.

Respectfully submitted.

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